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# HOUSE BILL No. 1826

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1-1-9.7; IC 6-1.1-2.5; IC 6-3.1-1-3; IC 6-3.1-1.5.

**Synopsis:** Clawback of economic development incentives. Provides for the loss of tax benefits for a corporation that commits a criminal violation or violates a state administrative rule or statutory civil standard of conduct.

**Effective:** July 1, 2003.

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## Leonard, Murphy

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January 23, 2003, read first time and referred to Committee on Ways and Means.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1826

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-1.1-1-9.7 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]: **Sec. 9.7. As used in this article, "pass through entity"**  
4 **means:**

5           **(1) a corporation that is or would be exempt from the**  
6 **adjusted gross income tax under IC 6-3-2-2.8(2);**

7           **(2) a:**

8               **(A) partnership;**

9               **(B) limited liability company; or**

10              **(C) limited liability partnership;**

11           **that is not taxed as a corporation for federal income tax**  
12 **purposes under the Internal Revenue Code.**

13       SECTION 2. IC 6-1.1-2.5 IS ADDED TO THE INDIANA CODE  
14 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2003]:

16       **Chapter 2.5. Loss of Tax Benefits**

17       **Sec. 1. The definitions in IC 6-3 apply throughout this chapter.**



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1       Sec. 2. As used in this chapter, "tax benefit" refers to a  
 2       deduction, credit, exemption, or exclusion from liability for an ad  
 3       valorem property tax. The term includes benefits that state law  
 4       authorizes a political subdivision to grant to a taxpayer. The term  
 5       does not include any deduction or exclusion required under the  
 6       Constitution of the State of Indiana or the Constitution of the  
 7       United States.

8       Sec. 3. (a) A tax benefit that is otherwise available to a  
 9       corporation in a taxable year is not available in a taxable year in  
 10      which the corporation:

- 11       (1) causes damage to the environment;
- 12       (2) violates human rights;
- 13       (3) adversely affects the public health or safety;
- 14       (4) damages the welfare of the communities in which the
- 15       corporation operates; or
- 16       (5) violates the dignity of its employees;

17      in violation of a criminal law in Indiana, a federal criminal law, or  
 18      a criminal law of another jurisdiction that is substantially  
 19      equivalent to a criminal law of this state or a federal criminal law.

20      (b) The tax benefit that is lost under this section may not be  
 21      carried forward to a subsequent taxable year, carried back to a  
 22      previous taxable year, or refunded. If the tax benefit is part of a  
 23      multi-year tax benefit granted to a corporation, the corporation  
 24      also is not entitled to the tax benefit in any subsequent taxable  
 25      year.

26      (c) Collection of delinquent tax liability resulting from the  
 27      application of a tax benefit that is lost under this section is not  
 28      subject to the statute of limitations on the collection of delinquent  
 29      tax liability that otherwise applies to the collection of delinquent  
 30      tax liability.

31      (d) This section does not bar the corporation from reapplying  
 32      for the tax credit for the same or similar economic activity, if the  
 33      law granting the credit allows reapplication, or from obtaining a  
 34      tax credit for actions taken by the corporation that are unrelated  
 35      to the activity for which the original tax benefit was granted.

36      Sec. 4. (a) A corporation is subject to loss of part or all of a tax  
 37      benefit if the corporation:

- 38       (1) causes damage to the environment;
- 39       (2) violates human rights;
- 40       (3) adversely affects the public health or safety;
- 41       (4) damages the welfare of the communities in which the
- 42       corporation operates; or

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(5) violates the dignity of its employees;  
in violation of a rule or regulation of an agency or a statutory civil  
law standard of conduct of this state, the federal government, or  
another jurisdiction (if it is substantially equivalent to a state or  
federal standard of conduct).

(b) A violation described in subsection (a) tolls the statute of  
limitations on the collection of delinquent tax liability until the  
entity with jurisdiction under subsection (c) makes a  
determination.

(c) If the political subdivision granting the tax benefit (or the  
county fiscal body if the tax benefit does not require action by any  
other political subdivision to be available to the taxpayer)  
reasonably believes that a corporation is subject to loss of part or  
all of a tax benefit under this section, the entity may bring a  
proceeding under IC 4-21.5 to determine:

(1) if the corporation is subject to loss of part or all of a tax  
benefit under this section;

(2) which tax benefits are not available to the corporation in  
the taxable year in which the violation occurred and in  
subsequent taxable years (if the tax benefit is a multi-year tax  
benefit); and

(3) what percentage of each affected tax benefit is not  
available to the corporation in the taxable year in which the  
violation occurred and in subsequent taxable years (if the tax  
benefit is a multi-year tax benefit).

(d) The entity bringing the action under subsection (c) shall  
notify the county auditor of any determination made under this  
section. Notification of the county auditor restarts the running the  
of the statute of limitations on the collection of delinquent tax  
liability.

Sec. 5. A pass through entity shall be treated as a corporation  
for the purposes of applying sections 3 and 4 of this chapter.

Sec. 6. An individual shall be treated as a corporation for the  
purposes of applying sections 3 and 4 of this chapter to the extent  
that the tax benefit is related to an activity conducted by the  
individual as a sole proprietor:

(1) engaged in a trade or business; or

(2) for the production of income;

other than as an employee of another person, corporation, or pass  
through entity.

SECTION 3. IC 6-3.1-1-3 IS ADDED TO THE INDIANA CODE  
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2003]: Sec. 3. As used in this article, "pass through entity" means:

(1) a corporation that is or would be exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a:

(A) partnership;

(B) limited liability company; or

(C) limited liability partnership;

that is not taxed as a corporation for federal income tax purposes under the Internal Revenue Code.

SECTION 4. IC 6-3.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

#### **Chapter 1.5. Loss of Tax Benefits**

Sec. 1. As used in this chapter, "tax benefit" refers to a deduction, credit, exemption, or exclusion from liability for a tax of statewide application. The term does not include any deduction or exclusion established under federal law that applies to determining adjusted gross income on a federal income tax return.

Sec. 2. (a) A tax benefit granted by state law that is otherwise available to a corporation in a taxable year is not available in a taxable year in which the corporation:

(1) causes damage to the environment;

(2) violates human rights;

(3) adversely affects the public health or safety;

(4) damages the welfare of the communities in which the corporation operates; or

(5) violates the dignity of its employees;

in violation of a criminal law in Indiana, a federal criminal law, or a criminal law of another jurisdiction that is substantially equivalent to a criminal law of this state or a federal criminal law.

(b) The tax benefit that is lost under this section may not be carried forward to a subsequent taxable year, carried back to a previous taxable year, or refunded. If the tax benefit is part of a multi-year tax benefit granted to a corporation, the corporation also is not entitled to the tax benefit in any subsequent taxable year.

(c) Collection of delinquent tax liability resulting from the application of a tax benefit that is lost under this section is not subject to the statute of limitations on the collection of delinquent tax liability that otherwise applies to the collection of delinquent tax liability.



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(d) This section does not bar the corporation from reapplying for the tax credit for the same or similar economic activity, if the law granting the credit allows reapplication, or from obtaining a tax credit for actions taken by the corporation that are unrelated to the activity for which the original tax benefit was granted.

Sec. 3. (a) A corporation is subject to loss of part or all of a tax benefit granted by state law if the corporation:

- (1) causes damage to the environment;
- (2) violates human rights;
- (3) adversely affects the public health or safety;
- (4) damages the welfare of the communities in which the corporation operates; or
- (5) violates the dignity of its employees;

in violation of a rule or regulation of an agency or a statutory civil law standard of conduct of this state, the federal government, or another jurisdiction (if it is substantially equivalent to a state or federal standard of conduct).

(b) A violation described in subsection (a) tolls the statute of limitations on the collection of delinquent tax liability until the department of commerce makes a determination under subsection (c).

(c) If the department of commerce reasonably believes that a corporation is subject to loss of part or all of a tax benefit under this section, the department of commerce may bring a proceeding under IC 4-21.5 to determine:

- (1) if the corporation is subject to loss of part or all of a tax benefit under this section;
- (2) which tax benefits are not available to the corporation in the taxable year in which the violation occurred and in subsequent taxable years (if the tax benefit is a multi-year tax benefit); and
- (3) what percentage of each affected tax benefit is not available to the corporation in the taxable year in which the violation occurred and in subsequent taxable years (if the tax benefit is a multi-year tax benefit).

(d) The department of commerce shall notify the department of state revenue of any determination made under this section. Notification of the department of state revenue restarts the running the of the statute of limitations on the collection of delinquent tax liability.

Sec. 4. A pass through entity shall be treated as a corporation for the purposes of applying sections 2 and 3 of this chapter.

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1       **Sec. 5. An individual shall be treated as a corporation for the**  
2       **purposes of applying sections 2 and 3 of this chapter to the extent**  
3       **that the tax benefit is related to an activity conducted by the**  
4       **individual as a sole proprietor:**

5               **(1) engaged in a trade or business; or**

6               **(2) for the production of income;**

7       **other than as an employee of another person, corporation, or pass**  
8       **through entity.**

9       **SECTION 5. [EFFECTIVE JULY 1, 2003] (a) IC 6-3.1-1.5, as**  
10       **added by this act, applies only to taxable years beginning after**  
11       **June 30, 2003.**

12       **(b) IC 6-1.1-2.5, as added by this act, applies only to property**  
13       **taxes first due and payable after December 31, 2003.**

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